

**TESTIMONY OF GARY B. O'CONNOR
BEFORE THE COMMERCE COMMITTEE
OF THE GENERAL ASSEMBLY**

MARCH 8, 2011

**REGARDING THE FIRST REPORT OF THE STATE OF CONNECTICUT
BROWNFIELD WORKING GROUP AND RAISED BILL NO. 6526**

Good Morning. My name is Gary O'Connor. I am a partner at the law firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP and I have served as one of the Co-Chairs of the Brownfield Working Group created pursuant to Public Act. 10-135. I would like to thank the Commerce Committee for the opportunity to speak today on the First Report of the State of Connecticut Brownfield Working Group and, more specifically, on Raised Bill No. 6526. In addition, I would like to thank the Commerce Committee, especially its Chairs, Representative Jeff Berger and Senator Gary LaBeau, for recognizing early on the importance of brownfields revitalization in improving the environment and serving as a catalyst for economic development, jobs creation and smart growth. We thank you for your tireless leadership and support in providing the necessary tools for brownfields remediation and redevelopment.

This Report and the work of the Brownfield Working Group continue the work of the Brownfields Task Force which began in 2006. This year's Working Group did not meet until quite late, December 2010; nevertheless, the Group was able to accomplish a great deal in a short amount of time.

The Working Group's first priority was to evaluate the effectiveness of recent brownfield programs and many of the general remediation programs administered by DEP. As a result, the Working Group proposes a number of refinements to these programs. In addition, the Working Group has reviewed a more sweeping change in the form of a new "brownfield remediation and

revitalization program,” which it proposes for your consideration. Finally, the Working Group recommends that a comprehensive evaluation of all regulatory and remediation programs be conducted by DEP.

Unlike the past Task Force Reports, the Working Group spent time not only deliberating these issues but also crafting proposed legislation to address these topics, which is embodied in Raised Bill 6526. Let me be perfectly frank, this Bill is a work in progress. Some of the sections of the Bill deal with incremental refinements. There was strong consensus within the Working Group with respect to these sections. Other proposals—often received from outside the Working Group—call for more significant changes to existing programs, structures and philosophies. Although not all of these proposals received unanimous support of the Working Group, it was felt that in the interest of transparency and in order to foster further discussion that these proposals be incorporated into the proposed Bill. We expect and encourage debate on some of these sections and believe that the Bill as a whole will be made better as a result of input from all stakeholders.

In this Report, the Working Group continues to follow the overall themes of past Task Force Reports: organizational reform, funding and financing initiatives, regulatory programs and liability relief.

Organizational Reform

In 2006 the Office of Brownfields Remediation and Development (OBRD) was created. The OBRD was intended to be a one-stop shop for all brownfield programs in Connecticut. It was to be led by a highly positioned director, be well staffed by personnel dedicated solely to brownfield issues, and well funded. This has not happened.

Despite the lack of follow-through on the part of the State, the OBRD has had some significant successes as noted in Appendix A. However, there have been too few of these successes. OBRD does not have the resources to undertake significant numbers of new brownfield projects, to educate more municipalities and to market aggressively throughout the region. Accordingly, the Working Group recommends that (i) the OBRD be managed by a high level director who deals exclusively with brownfield issues; (ii) more staff be allocated by OBRD to work solely on brownfield matters; and (iii) the office be properly funded.

The recommendations of the Working Group are consistent with the recommendations of the Environment Working Group Transition Team established by Governor Malloy. That Group recommended that the OBRD should be directed by a Deputy Commissioner reporting to the Commissioner of DECD and/or the Governor, with sufficient staff focused on the mission of coordinating brownfield redevelopment, permitting transit oriented development and responsible growth. The Environment Working Group believed that it was necessary for the OBRD to be accessible to the development community invested with the appropriate authority to oversee and manage large and small projects, implement funding (grant and loan programs) and market/educate the business and development community and municipalities as to the programs and assistance the State provides. We concur.

Financing and Funding

There are a number of financing and funding programs administered by DECD, CDA and DEP that allow government funds to be used for various aspects of brownfield and/or contaminated property, remediation and redevelopment. A chart identifying these programs is included as Appendix B with this testimony. Beginning in 2006 several new funding programs

were created specifically targeted to brownfields. These programs include: (i) a municipal pilot grant program; (ii) a remedial action and redevelopment grant program and (iii) a targeted brownfield development loan program. Two accounts were created: one for the municipal pilot grant program called the Connecticut Brownfields Remediation Account and one for the other funding programs created under C.G.S. § 32-9kk, called the Brownfield Remediation and Development Account.

In short, over the past few years we have developed significant funding programs and accounts; however, funding has been abysmal. Even prior to the recent economic downturn, the State failed to show its commitment to the brownfields initiative by only providing incremental funding in amounts that were a fraction of the funding recommended by the Task Force. For instance, the municipal pilot program was authorized to receive \$7.5 million; however, only \$4.5 million was actually approved by the Bonding Commission in two increments of \$2.25 million. This program has been enormously successful and all of the funding has been allocated. DECD reported robust competition. Between 15 and 19 applications were received each round and some very good projects were not funded. The success of this program means that there is continuing demand from the municipalities. Accordingly, the Working Group recommends that the program's pilot status be eliminated and that the Legislature make the municipal pilot grant program a permanent program. We recommend that for each round of funding at least 6 municipalities be selected. These recommendations have been codified in Sections 1-3 of the proposed Bill. The Remedial Action and Redevelopment Municipal Grant Program is another opportunity for municipalities. It establishes regular deadlines for grants to be provided. This program has not been adequately funded. Likewise, the Targeted Brownfield Development Loan Program was created as a revolving loan fund available to provide financial assistance in the

form of low interest loans to eligible applicants including potential brownfield purchasers. The Legislature authorized \$10 million for these programs but only \$2.5 million was made available by the Bonding Commission. As a result, neither funding program has gained traction in the development community.

To put things in perspective, in 2008, the Brownfields Task Force recommended that the State provide an initial infusion of \$75 million in brownfield funding with additional contributions of \$25 million in each of the next 5 years. This funding recommendation, even at that time, was considered modest relative to the enormous investments made by other industrial states into their brownfields programs. The Working Group acknowledges that funding requests in this difficult economic time may appear on its face inappropriate, but it is important to note that brownfields redevelopment provides a very significant stimulus to the economy. A 2008 Report by the Northeast-Midwest Institute found that:

- \$10,000 to \$13,000 in public investments in brownfields creates/retains 1 job;
- \$1 of public money leverages \$8 total;
- Public investments in brownfields are recouped from local taxes in 5 years;
- On average, each brownfield site has a potential to create 91 jobs.

The Working Group respectfully suggests that funding brownfield redevelopment through a self-sustaining source of funding, unrelated to the Bonding Commission, is an effective way to spur economic development, create jobs and revitalize our urban centers.

Regulatory and Liability Reform for Brownfields

The Working Group has looked closely at a number of regulatory programs in an effort to reduce the impediments to brownfield redevelopment. One program that the Group analyzed was the Abandoned Brownfield Clean-up (ABC) Program (CGS § 32-911). This Program was

designed to remove eligible brownfield properties from the State's general remediation scheme by creating a more streamlined regulatory approach that provides a number of incentives to the applicant including some liability relief. In particular, the ABC Program provides that an eligible applicant is not responsible for investigating or remediating any pollution or source of pollution that has emanated from the applicant's property prior to his or her taking title to the property. This is an enormous incentive for potential developers of brownfield properties. Unfortunately, to date, no one has enrolled in this Program. It is not clear whether the lack of interest is due to the poor economy or due to certain limitations in the Program, itself. The Working Group believes that it may be a combination of the two. Therefore, in Sections 10-12 of the proposed Bill, the Working Group recommends a number of revisions that will expand the scope of the ABC Program. First, it clarifies the definition of abandoned property to one that has been a brownfield at least 5 years before the application. Second, municipalities are specifically included in the Program and defined to include economic development agencies/entities, non-profit economic development corporations, funded, controlled or established by a municipality; or non-stock corporations or limited liability companies controlled by municipalities or municipal economic development agencies/entities. Third, municipalities are not subject to the limitations of C.G.S. § 32-91l(b)(6) which requires a showing that a person responsible for the pollution cannot be found or is unable to complete the remediation.

The Working Group also proposes exempting the person or municipality that is within the ABC Program from the requirements of the Transfer Act. (Section 11 amends the Transfer Act, C.G.S. § 22a-134 by adding a new paragraph (x) to the exempt transaction list. Acquisition of the property and subsequent transfer are exempt if remediation is ongoing or complete in accordance with § 32-91l.) Likewise, the Working Group has proposed that a person eligible

under the ABC Program also qualifies for a Covenant Not To Sue at no cost. And that the Covenant Not To Sue should be transferrable to subsequent owners if the property is undergoing remediation or remediation is complete pursuant to §32-91l. (See Section 12.) It is the hope of the Working Group that these additional changes will provide the necessary incentives to redevelop sites under the Abandoned Brownfields Clean-Up Program.

My Co-Chair, Ann Catino, will address a number of other significant regulatory and liability relief proposals suggested by the Working Group. Again, I would like to congratulate the Commerce Committee on its commitment to brownfields revitalization. With your help we can send a strong message to the rest of the country that the State of Connecticut is committed to brownfields remediation and redevelopment.

Appendix A

Office of Brownfield Remediation and Development (OBRD) Department of Economic & Community Development

- OBRD created under Public Act 06-184
- 2006 - OBRD website development
- 2007 MOU signed – DECD, DEP, DPH, CDA
- 2007 – OBRD awarded \$1M statewide revolving loan fund (RLF) for remediation by EPA
- 2008 – Formalized partners meetings, streamlined application
- 2008 – OBRD awarded \$400,000 for environmental assessment by EPA
- 2008 – 1st round Brownfield Municipal Pilot Program remediation projects (\$2.25M):
 - Stamford, Commons Park at Harbor Point
 - Waterbury, Cherry Street Industrial Park
 - Redding, Georgetown
 - Norwalk, Train Station
 - Shelton, Axton Cross
- 2009 – Pope Park Zion remediation, Hartford (EPA HTFD RLF)
- 2009 - Roosevelt Mills Project, Vernon
- 2009 – Former Decker's Laundry assessment, Salisbury
- 2009 – OBRD awarded \$600,000 in supplemental revolving loan funding by EPA
- 2009 - Legislative
 - Abandoned Brownfields Program
 - Targeted Brownfield Loan Program
 - Streamlined brownfield remediation in floodplains (2007)
- 2010 – 2nd round Brownfield Municipal Pilot Program (\$2.25M)
 - Hartford, Swift Factory
 - Waterbury, Waterbury Industrial Commons
 - Meriden, Factory H
 - Madison, Griswold Airport
 - Naugatuck, Train Station
 - Putnam, Cargill Falls Mill
- 2010 – Current EPA RLF remediation projects
 - Habitat for Humanity, New London
 - Remington Rand, Middletown
 - Willimantic Whitewater Partnership, Willimantic
 - 14 Bridge Street, Montville
- 2010 – Assessment projects
 - Willimantic Whitewater Partnership, Willimantic
 - 98 Prospect St., Enfield
 - P & A Mill, Killingly
 - Former Decker's Laundry, Salisbury
 - Former Swift Factory Hartford
 - Former Hi-G, South Windsor
- 2010 – (Fall) Brownfield Opportunities list available on website

- 2010 – OBRD awarded \$200,000 in EPA RLF supplemental funds
- 2010 – OBRD collaborated with Windham Region Council of Governments & Northeast CT Council of Governments on \$1M EPA assessment funding application

Appendix B

AGENCY	PROGRAM	PROGRAM DETAIL	TYPE	FUNDING SOURCE	AUTHORIZED	FUNDING AVAILABILITY	AMOUNT EXPENDED TO DATE	STRENGTHS	WEAKNESSES
CBRA	TIF	Up-front TIF based cash for developers	GRANT	BONDS		Subject to CDAs available funding	\$ 12,000,000.00	Immediate source of funding for developer	Projects have to meet a minimum 400,000 threshold
CBRA	DIRECT LOAN	Direct senior and subordinated loans	LOAN	BONDS/COA OPERATING FUNDS		Subject to CDAs available funding	\$ 250,000.00	Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
CBRA	LOAN GUARANTEE	Provide full coverage of lender's loss up to 30% of loan balance	LOAN	BONDS/COA OPERATING FUNDS		Subject to CDAs available funding		Leverage institutional funding	Need lead lending institution/developer must have solid banking relationship
DECD	ABANDONED BROWNFIELD CLEANUP PROGRAM	Liability protection for developers	N/A	N/A	N/A	N/A		Imits liability for off-site investigation and cleanup	Imited eligibility criteria, and no source of title funds to address orphan share
DECD	TARGETED BROWNFIELD DEVELOPMENT PROGRAM	Low interest loans for manufacturing retail/residential mixed use	LOAN	Bonds	\$ 10,000,000.00	\$ 2,500,000.00	\$ 1,500,000.00	accounts to receive funds, - interest, repayment, etc.	Reliance on borrowing for majority of start up funding
DECD	BROWNFIELD MUNICIPAL PILOT PROGRAM	Competitive Program for Multiparties	GRANT	Bonds	\$ 7,500,000.00	\$ -	\$ 4,500,000.00	accounts to receive funds, - interest, repayment, etc.	
DEP	URBAN SITES REMEDIAL ACTION PROGRAM (USRAP)	Site located in designated distressed community(OBRD and DEP)	GRANT	Bond Funds	\$ 32,870,390.00	\$ -	\$ 32,870,390.00	accounts to receive funds, - interest, repayment, etc.	
DECD	CT EPA ASSESSMENT PROGRAM	Monies through the EPA for assessment	GRANT	Federal Funds	\$ 400,000.00	\$ 189,431.00	\$ 210,569.00		Iterative limited eligibility criteria
DECD	STATEWIDE REVOLVING LOAN FUND	EPA funds for the remediation of contaminated properties	GRANT/Federal Funds	Federal Funds	\$ 1,800,000.00	\$ 880,432.00	\$ 919,568.00		Imited eligibility criteria
DECD	Hardford EPA Revolving Loan Fund	EPA funds for the remediation of contaminated properties in Hartford	GRANT/LOAN	Federal Funds	\$ 602,171.00	\$ -	\$ 602,171.00		Imited eligibility criteria
DEP	UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP PROGRAM	Reimbursement Program - reimburses responsible parties and 3rd parties for investigation and clean up for certain UST releases	Reimbursement	General Fund Line Item				available to responsible parties and 3rd parties	Imited eligibility criteria, insufficient funds to meet needs
DECD	DRY CLEANING ESTABLISHMENT REMEDIATION FUND	Provides grants for the landowner or operator for assessment/cleanup	GRANT	Tax Receipts	\$ 10,100,000.00	\$ -	\$ 10,100,000.00	Small business assistance	\$300k cap, limited funds
DECD	SCRIP	Monies to be used for Phase II/Phase III and RAP/Remediation	LOAN	Bonds	\$ 6,000,000.00	\$ 506,285.00		accounts to receive funds, - interest, repayment, etc.	"construction loan" too narrow
DECD	General State Development Programs MANUFACTURING ASSISTANCE	General DECD economic development assistance program. Monies used for hard and soft costs related to brownfield reuse including, engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT/LOAN	Bonds	N/A	N/A	\$ 22,100,000.00	Flexibility in use of funds	1) bonded funds, 2) competing with general ED projects supporting business growth, 3) for economic development projects only
DECD	URBAN ACT	General state development assistance program. Monies used for hard and soft costs related to brownfield reuse including, engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	Bonds	N/A	N/A	\$ 26,700,000.00	Flexibility in use of funds	1) Controlled by OPM, 2) bonded funds
OPM	Small Town Economic Assistance Program (STEAP)	General state development assistance program to small towns. Some towns have used funding to support brownfield projects. Monies used for hard and soft costs related to brownfield reuse including, engineering, assessment, monitoring, remediation, abatement, demolition and construction.	GRANT	Bonds	N/A	N/A	\$ 1,000,000.00	Flexibility in use of funds	1) Controlled by OPM, 2) bonded funds
	* Brownfield Project identification in progress								
	* BROWNFIELD PROJECTS OF FUTURE INTEREST								
DECD	HUD 108 Program	Direct HUD line of credit loan to qualified project	LOAN	Federal funds	N/A	\$ 3,000,000.00	Placed in 2010	1) Can leverage BDI grants, 2) Leverage HUD CDBG- Small Cities Allocation, 3) Can support non-remediation project activities	1) Subject to federal thresholds, national priorities and income requirements, 2) loan, 3) HUD approval timeframes